APPENDIX A
ORDER OF COURT OF APPEALS OF THE STATE OF NEW YORK AFFIRMING ORDER OF INTERMEDIATE COURT AFFIRMING ONVICTION

STATE OF NEW YORK
COURT OF APPEALS

THE PEOPLE ETC.

Respondent,

v.

JOHN R. DeVITO,

Appellant.

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(287) Murray Bogatin, NY City, for appellant.
Patrick Henry, DA, Suffolk County (John G. Peli of counsel) for respondent.

MEMORANDUM

The order of the Appellate Division should be affirmed.

Although it was inappropriate for the trial court to address counsel as it did in the presence of the jury, it was not error for the court to prevent counsel from cross-examining the witness concerning the possibility of her receiving a life sentence, a risk to which the defendant was also exposed.

No door had been opened to this inquiry and it was not necessary to specify the potential sentence in order to explain to the jury the extent of the arrangement the witness had made with the prosecutor for a grant of immunity (*People v. Roth*, 30 NY2d 99).

* * *

Order affirmed in a memorandum. Chief Judge Cooke and Judges Jasen, Gabrielli, Jones, Wachtler, Fuchsberg and Meyer concur.

Decided June 8, 1982

APPENDIX B
JUDGMENT OF CONVICTION

At a Criminal Term of the Supreme Court
Part II
Held in and for Suffolk County, at the Court House, in Hauppauge, Suffolk County, New York, on the 20th day of March, 1980.

Present: Hon. JOSEPH JASPAN, Acting Justice of the Supreme Court.

Indictment No. 2243-78

Edward Golden, Esq., Asst. District Attorney for People

Murray Bogatin, Esq.

THE PEOPLE OF THE STATE OF NEW YORK

Against

JOHN R. DEVITO,

Defendant.

Conspiracy 1st Degree (1st Ct.); Criminal Sale of a Controlled Substance 3rd Degree (2nd Ct.); Criminal Possession of a Controlled Substance 3rd Degree (Cts. 3 & 5); Criminal Sale of a Controlled Substance 2nd Degree (Cts. 4 & 10); Criminal Sale of a Controlled Substance 6th Degree (Cts. 6 & 8); Criminal Possession of a Controlled Substance 6th Degree (Cts. 7 & 9); Criminal Possession of a Controlled Substance 2nd Degree (11th Ct.).

This cause having been called in its order on the Calendar, on motion of Edward Golden, Esq., Assis-

tant District Attorney for the People ordered that a jury be called and this case tried on March 12, 1980.

The Jury was duly drawn, called and sworn on March 14, 1980 at 12:53 P.M.

The Court dismissed Criminal Sale of a Controlled Substance 3rd Degree (2nd Ct.); Criminal Possession of a Controlled Substance 3rd Degree (Cts. 3 & 5); and Criminal Sale of a Controlled Substance 2nd Degree (4th Ct.); per decision dated March 5, 1979.

The Court dismissed Criminal Sale of a Controlled Substance 6th Degree (8th Ct.) and Criminal Possession of a Controlled Substance 6th Degree (9th Ct.) on March 12, 1980.

The Court dismissed Criminal Sale of a Controlled Substance 6th Degree (6th Ct.); and Criminal Possession of a Controlled Substance 6th Degree (7th Ct.); at the end of the people's case, upon motion of defendant.

The Court did not submit Criminal Possession of a Controlled Substance 2nd Degree (11th Ct.) to the Jury.

The Jury retired in charge of a sworn officer, and subsequently they came into Court and being called said they did find the defendant JOHN R. DEVITO GUILTY as charged of Conspiracy 1st Degree (1st Ct.) and GUILTY as charged of Criminal Sale of a Controlled Substance 2nd Degree (10th Ct.).

The defendant made a motion to set aside the verdict as against the weight of the credible evidence—DENIED.

No request to poll Jury.

Probation Report Ordered.

Defendant remanded to the custody of the Sheriff for Sentence on April 10, 1980.

This term of the Court extended for this purpose.

A true extract of the Minutes.

s/Arthur J. Felice, Clerk

Clerk DeGuiceis — File No. 33587-C
Steno LaMagna — Indictment No. 2243-78
People vs. JOHN R. DEVITO

Whereupon it is further ORDERED and ADJUDGED by the Courot that the said JOHN R. DEVITO for the felony, Criminal Sale of a Contrulled Substance 2nd Degree (10th Ct.) aforesaid, whereof he is convicted be sentenced to an INDETERMINATE sentence of imprisonment which shall have a maximum term of THE DEFENDANT'S NATURAL LIFE and the Court imposes a minimum period of imprisonment of SIX (6) YEARS as to 10th Count.

Defendant made motion to vacate sentence as to 10th Count and be re-sentenced. GRANTED.

It is ORDERED and ADJUDGED by the Court, that the said JOHN R. DEVITO for the felony, Criminal Sale of a Controlled Substance 2nd Degree (10th Ct.) aforesaid, whereof he is convicted be sentenced to an INDETERMINATE sentence of imprisonment which shall have a maximum term of THE DEFENDANT'S NATURAL LIFE and the Court imposes a minimum period of imprisonment of THREE (3) YEARS as to 10th Count.

Said sentences to run concurrently.

Defendant was advised of his right to appeal within 30 days.

Defendant remanded to the custody of the Sheriff.

A TRUE EXTRACT OF THE MINUTES

s/Arthur J. Felice, Clerk

APPENDIX C
ORDER GRANTING LEAVE TO APPEAL TO COURT OF APPEALS OF STATE OF NEW YORK

STATE OF NEW YORK
COURT OF APPEALS

BEFORE: HON. JACOB D. FUCHSBERG, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK

against

JOHN R. DEVITO

I, JACOB D. FUCHSBERG, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein* questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to §460.20 of the Criminal Procedure Law, it is therefore

ORDERED that permission be and it is hereby granted to the above-named appellant to appeal to the Court of Appeals.

Dated at New York, New York
September 22, 1981

s/Jacob D. Fuchsberg
Associate Judge

*Description of Order: Order of the Appellate Division, Second Department, dated May 18, 1981, affirming the judgment of the Supreme Court, Suffolk County, rendered on April 10, 1980.

APPENDIX D
ORDER OF INTERMEDIATE COURT AFFIRMING CONVICTION

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on May 18, 1981

HON. LEON D. LAZER, Justice Presiding,
HON. CHARLES MARGETT,
HON. FRANK D. O'CONNOR,
HON. WILLIAM C. THOMPSON, Associate Justices

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

v.

JOHN R. DEVITO,

Appellant.

In the above entitled action, the above named John R. DeVito, defendant in this action, having appealed to this court from a judgment of the Supreme Court, Suffolk County, rendered April 10, 1980; and the said appeal having been argued by Murray Bogatin, Esq., of counsel for the appellant, and argued by John G. Poli, Esq., of counsel for the respondent, and due deliberation having been had thereon; and

upon this court's decision slip heretofore filed and made a part hereof, it is:

ORDERED that the judgment appealed from is hereby unanimously affirmed.

Enter:
IRVING N. SELKIN
Clerk of the Appellate Division

APPENDIX E
MEMORANDUM DECISION OF INTERMEDIATE COURT AFFIRMING CONVICTION

LEON D. LAZER, J.P.
CHARLES MARGETT
FRANK D. O'CONNOR
WILLIAM C. THOMPSON, JJ

April 23, 1981

The People, etc., Respondent, v. John R. DeVito, appellant. (Ind. No. 2243/78)